IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2626 of 2007()

AGAINST THE ORDER IN LP 289/2006. IN CC.977/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

.....

PETITIONER: ACCUSED:

PONNACHAN, S/O. K.C. CHELLAPPAN,
THADATHIVILA PUTHAN VEEDU, PUNUKUNOOR, KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

Crl.M.C. No.2626 Of 2007

= = = = = = = = = = = = = = =

Dated this the 17th day of August, 2007

ORDER

Petitioner faces indictment in a prosecution for the offences punishable, inter alia, under Section 323 and 324 read with 34 I.P.C. Investigation is complete. Final report has already been filed. The learned Magistrate has taken cognizance and registered the case. The petitioner was not available for arrest, in the course of investigation also. The learned Magistrate has issued coercive processes against the petitioner. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The absence of the petitioner earlier was on account of reasons beyond his control. No proper summons was ever served on him. In his correct address no summons had been issued at all. In fact the petitioner is appearing before the court in two other cases. It is only because the petitioner did not know of the pendency of such a case that the petitioner did not and could not appear before the learned Magistrate in the present case. The petitioner is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. He further prays

that appropriate directions under Section 438 Cr.P.C may be issued in favour of the petitioner.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

3. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE